

NOMINATION OF THURGOOD MARSHALL
TO BE
SOLICITOR GENERAL OF THE UNITED STATES

1900-2

HEARING
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
EIGHTY-NINTH CONGRESS
FIRST SESSION
ON
NOMINATION OF THURGOOD MARSHALL TO BE SOLICITOR
GENERAL OF THE UNITED STATES

JULY 29, 1965

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1965

COMMITTEE ON THE JUDICIARY

JAMES O. EASTLAND, Mississippi, *Chairman*

JOHN L. McCLELLAN, Arkansas	EVERETT MCKINLEY DIRKSEN, Illinois
SAM J. ERVIN, Jr., North Carolina	ROMAN L. HRUSKA, Nebraska
THOMAS J. DODD, Connecticut	HIRAM L. FONG, Hawaii
PHILIP A. HART, Michigan	HUGH SCOTT, Pennsylvania
EDWARD V. LONG, Missouri	JACOB K. JAVITS, New York
EDWARD M. KENNEDY, Massachusetts	
BIRCH BAYH, Indiana	
QUENTIN N. BURDICK, North Dakota	
JOSEPH D. TYDINGS, Maryland	
GEORGE A. SMATHERS, Florida	

SPECIAL SUBCOMMITTEE

QUENTIN N. BURDICK, North Dakota, *Chairman*

BIRCH BAYH, Indiana	HUGH SCOTT, Pennsylvania
THOMAS J. DODD, Connecticut	JACOB K. JAVITS, New York

CONTENTS

	Page
Statement of—	
Hon. Jacob K. Javits, a U.S. Senator from the State of New York	1
Hon. Robert F. Kennedy, a U.S. Senator from the State of New York	2
Judge Thurgood Marshall, nominee to be Solicitor General of the United States	3
Statement submitted by Hon. William F. Ryan, a U.S. Congressman from the 20th District of New York	3

EXHIBITS

Biographical sketch of Thurgood Marshall	3
List of cases in which nominee participated as a circuit court judge	4

III

ESTATE ZOO

在這裏，我們可以說，這就是一個「社會主義」的社會。

卷之三

8. The following table gives the average AT in the first and
9. last 1000 ft. of the various sections of the road, divided into 100 ft.

NOMINATION OF THURGOOD MARSHALL TO BE SOLICITOR GENERAL OF THE UNITED STATES

TUESDAY, JULY 29, 1965

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Burdick, Bayh, Dodd, Scott, and Javits) met, pursuant to notice, at 10:07 a.m., in room 2228, New Senate Office Building, Senator Quentin N. Burdick presiding.

Present: Senators Burdick and Javits.

Also present: Joseph A. Davis, chief clerk of the committee.

Senator BURDICK. The subcommittee will come to order.

The hearing this morning has been scheduled for the purpose of considering the nomination of Thurgood Marshall of New York, to be Solicitor General of the United States, vice Archibald Cox. Notice of this hearing was published in the Congressional Record, July 26, 1965. Senator Javits by formal notification approves the nomination. Senator Kennedy of New York by formal notification approves the nomination.

At this time the senior Senator from the State of New York, Mr. Javits, is recognized for the purpose of presenting a statement on behalf of the nominee; Judge Thurgood Marshall, to be Solicitor General of the United States.

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, I have great pleasure and honor in introducing to the subcommittee of which I also have the honor to be a member Mr. Thurgood Marshall, now a justice of the Circuit Court of Appeals for the Second Circuit, and a lawyer and distinguished New Yorker whom I have known for—I am just trying to think back in my mind, but at least 20 years, when I was still in the Army.

That goes back even longer than that. And I have watched his career with great pride and satisfaction and his growth into one of the most distinguished trial lawyers in this Nation, especially noted for the early perception of the trend of decisions under the Constitution as it affected the interpretation of the mandate of the 14th and 15th amendments to the Constitution.

As a judge, and I supported him very strongly when he was first designated by the President to be a judge and then confirmed by the Senate, he has had an exemplary career with distinguished opinions to his credit, and a fine quality of judicial temper. And yet I must feel, Mr. Chairman, that in returning to the lists, as it

were, as Solicitor General of the United States, he returns on the highest level of which our country is capable to his true calling, that of a trial lawyer and especially that of a lawyer arguing cases before the highest appellate court.

He will, I know, be a most distinguished Solicitor General. These duties are so native to his talents that he will now be performing.

Also, Mr. Chairman, I think it is very important to note that Thurgood Marshall and I together have had a great deal of experience. He has always been objective. He is essentially a lawyer. And he even has been objective where it has run very strongly counter to things he would like to be otherwise, and, of course, this will give him an additional strength as Solicitor General of the United States.

It is not often that a man in the fullness of his years and his talents has this opportunity to fulfill what I think is really almost his mission in life and I feel he will do that as Solicitor General.

May I say, too, Mr. Chairman, that I am so deeply gratified that this particular chairman has been chosen to conduct these hearings. They have been conducted with the greatest speed and celerity. There was a slight contretemps for a minute over the thought that I hadn't sent my slip in on time which I, of course, have been more than anxious to do. Perhaps because it was so carefully carried by hand it was delayed rather than accelerated. And I am very grateful for that. And also very grateful that a man like Thurgood Marshall with a sense of mission in his heart should leave the security of the bench and the lifetime tenure of the bench for what could be a relatively transient office, because he feels the call and because the call has been made by the President.

And so, Mr. Chairman, before I take my seat as a member of the subcommittee, I have the greatest honor to commend the nominees to the subcommittee and to the Senate for early confirmation so that he may embark on the duties for which he has been by nature and training so richly endowed.

SENATOR BURDICK. At this time the chairman will recognize the junior Senator from the State of New York, the Honorable Robert Kennedy, to make such presentation he desires and to present the nominees to the committee.

STATEMENT OF HON. ROBERT F. KENNEDY, A U.S. SENATOR FROM THE STATE OF NEW YORK

SENATOR KENNEDY. Mr. Chairman, I am happy also to present Thurgood Marshall to this committee, to the chairman. I had the honor of recommending Judge Marshall to President Kennedy as a member of the Second Circuit Court of Appeals back in 1961. He had served with great distinction as a lawyer prior to that time, and we felt it was one of the best appointments that was made.

He has served with great honor as a judge of the second circuit. His opinions, I think, have been noteworthy and distinguished. He has shown a great compassion during his whole life as well as tremendous talents. So I think that he has big shoes to fill with his predecessor, Mr. Archie Cox, who I think was one of the great Solicitors General of all time, but I know of the talents that Thurgood Marshall has, the understanding he has of the law and the compassion and understanding that he has of people, that he will make one of the

great Solicitors General of history of this country. So I am very proud to introduce him to the subcommittee.

Senator JAVITS. Mr. Chairman, may I say what my colleague would not say and that is that I think it is a unique commendation that the former Attorney General of the United States during whose administration Mr. Marshall had his appointment as justice should be in the felicitous position of now advocating his confirmation as Solicitor General. Nobody knows better, I think, than Senator Kennedy.

Senator BURDICK. Thank you, Senator Kennedy.

After that introduction, Judge Marshall, the platform is yours.

STATEMENT OF THURGOOD MARSHALL, NOMINEE TO BE
SOLICITOR GENERAL OF THE UNITED STATES

Mr. MARSHALL. Mr. Chairman, I don't know what to say. It is a difficult proposition. I had it once before; a New Jersey court judge said since you are not a member of the bar of New Jersey how can you convince me that you are a competent lawyer and I told him I could very easily demonstrate that I was incompetent but I didn't see how I could demonstrate I was competent, and I am afraid I am in this position here, but I am perfectly willing to answer any questions.

Senator JAVITS. Mr. Chairman, may I suggest that the biography of Thurgood Marshall be identified as accurate, which is before him to be admitted as part of the record.

Senator BURDICK. Without objection it will be made a part of the record.

(The document referred to follows:)

THURGOOD MARSHALL

Born: July 2, 1908, Baltimore, Md.

Education: 1925-30, Lincoln University, Lincoln University, Pa., A.B. degree, 1933, Howard University, Washington, D.C., LL.B. degree.

Bar: 1933, Maryland.

Experience: 1933-36, private practice of law, Baltimore, Md. NAACP: 1934-36, counsel for Baltimore branch; 1936-38, assistant special counsel; 1938-50, special counsel in charge of legal cases; 1950-61, director-counsel of Legal Defense & Education Fund, Inc., New York City; 1951, investigator of courts-martial cases involving Negro soldiers in Japan and Korea; January-February 1960, consultant at Constitutional Conference on Kenya at London, England; April 1961, head of U.S. delegation at celebration of the independence of Sierra Leone, West Africa; since Sept. 14, 1962, U.S. circuit judge for the second circuit.

Marital: Married, two sons.

Office: Foley Square, New York, N.Y.

Home: 501 West 123d Street, New York, N.Y.

To be Solicitor General of the United States.

Senator JAVITS. Is that an accurate biographical statement?

Mr. MARSHALL. Just about, sir.

Yes, I think it is.

Senator JAVITS. The answer is "Yes."

Mr. MARSHALL. Yes, sir.

Senator JAVITS. Also would you mind submitting for the record a list of the cases in which you participated as a circuit court judge and those in which you wrote the opinion or in which you wrote a dissent?

Mr. MARSHALL. Senator Javits, I think the committee already has it. They sent for it from the Library of Congress and I know my chambers checked it. If not, I will be glad to submit it.

NOMINATION OF THURGOOD MARSHALL

Senator BURDICK. This will be made a part of the record without objection.

(The document referred to follows.)

SEPTEMBER TERM, 1961

Judge Thurgood Marshall

OPINIONS WRITTEN

1. Arnold Kahn *v.* SEC (297 F. 2d 112)
2. Irwin Berko *v.* SEC (297 F. 2d 116)
3. Bess Galbraith, et al. *v.* US (296 F. 2d 631)
4. Dulien Steel Products *v.* Bankers Trust Co. (298 F. 2d 836)
5. NLRB *v.* Philamon Laboratories (298 F. 2d 176)
6. Nicola Massa *v.* C.A. Venezuelan Navigacion (298 F. 2d 239)
7. Charles Catalano *v.* USA (298 F. 2d 616)
8. Art National *v.* FTC (298 F. 2d 476)
9. NLRB *v.* W. Ralston & Co. (298 F. 2d 927)
10. NLRB *v.* Business Mach. & Office Appliances, Local 459 (300 F. 2d 237)
11. Mildred Shepard *v.* N.Y., N.H. & Hartford R.R. (300 F. 2d 129)
12. US ex rel Ahmed Kassim *v.* Warden (298 F. 2d 479)
13. Paul Bevelheimer *v.* Slick Airways (303 F. 2d 69)
14. Speedry Chem. Prod. *v.* Carter's Ink Co. (306 F. 2d 328)
15. Budget Dress Corp. *v.* Joint Bd'of Dress & Waistmakers Union (299 F. 2d 936)
16. USA *v.* Verra & Piccirillo (301 F. 2d 381)
17. CIR *v.* Estate of Canfield (306 F. 2d 1)
18. Dutch American Mercantile Corp. *v.* Eighteenth Avenue Land Co. (302 F. 2d 636)
19. USA *v.* Dinty Warmington Whiting (308 F. 2d 587)
20. Antonio De Lima *v.* Trinidad Corp. (302 F. 2d 585)
21. Al Rader *v.* Joseph Lichtenthal (306 F. 2d 195)
22. USA *v.* Thomas Lavelle (306 F. 2d 216)
23. Robert Ginsberg *v.* CIR (305 F. 2d 664)
24. USA *v.* Martin Ayala (307 F. 2d 574)
25. Nassau Lens Co. *v.* CIR (308 F. 2d 39)
26. McCall, Trustee *v.* Stephen Gamp (303 F. 2d 711)
27. US ex rel Ronald Sadness *v.* Warden (312 F. 2d 559)
28. USA *v.* Antoine Rinieri (308 F. 2d 24)

DISSENTING OPINIONS

1. Wood Gen. Trading Establishment *v.* James Coe, et al. (297 F. 2d 651)
2. Rutland Railway Corp. *v.* Brotherhood of Locomotive Engineers (307 F. 2d 21)

CONCURRING OPINIONS

1. Daniel Southard *v.* Margaret Southard (305 F. 2d 730)
2. USA *v.* Donovan & Andrews (301 F. 2d 376)

1962 TERM

OPINIONS WRITTEN

1. United States *v.* William Rickenbacker (309 F. 2d 462)
2. Edward Schilling *v.* McAllister Bros. (310 F. 2d 123)
3. Ferrara *v.* Sheraton McAlpin Corp. (311 F. 2d 294)
4. United States *v.* John Oddo (314 F. 2d 115)
5. Local 453, Int'l Union of Elec. Workers *v.* Otis Elevator (314 F. 2d 25)
6. Gross *v.* J.F.D. Mfg. Co. (314 F. 2d 196)
7. Deering Milliken *v.* Leesona Corp. (315 F. 2d 477)
8. Berko *v.* SEC (316 F. 2d 137)
9. United States *v.* George Johnson (315 F. 2d 704)
10. U.S.A. ex rel. Weber *v.* People of N.Y. State (316 F. 2d 603)
11. Kustaluk *v.* United Cross Navigation Corp. (316 F. 2d 869)
12. Feinstein *v.* U.S. and the ICC (317 F. 2d 509)
13. Swan *v.* Board of Higher Education (319 F. 2d 56)
14. U.S.A. *v.* Watts (319 F. 2d 659)

NOMINATION OF THURGOOD MARSHALL

15

15. U.S.A. v. A. Paroutian (319 F. 2d 661)
16. U.S.A. v. Rossi (319 F. 2d 701)
17. Ali v. McCobb (321 F. 2d 633)
18. Shenker v. U.S.A. (322 F. 2d 622)

PER CURIAM

1. U.S. ex rel. Whiteside v. Slavin (309 F. 2d 322)
2. Michael Kearney v. B A'Hearn (309 F. 2d 487)
3. U.S.A. v. Carmen Terranova (309 F. 2d 365)
4. NLRB v. Filtron Co. (309 F. 2d 184)
5. U.S.A. v. Solomon Fried (309 F. 2d 851)
6. Ludwig Baumann v. C.I.R. (312 F. 2d 557)
7. U.S.A. v. Charles Ramsey (315 F. 2d 199)
8. Dr. Beck and Co. G.m.b.H. v. General Elec. (317 F. 2d 533)
9. U.S.A. v. Douglas (319 F. 2d 526)

CONCURRING OPINIONS

1. Massachusetts Mutual Life Insur. v. Brei (311 F. 2d 463)
2. Federal Trade Commission v. Sterling Drug (317 F. 2d 669)

DISSENTING OPINION

1. U.S. ex rel J. McGrath v. J. E. LaVallee (319 F. 2d 308)

1963 TERM

OPINIONS WRITTEN

1. Peter Tedeschi v. Luckenbach SS Co. (324 F. 2d 628)
2. Oscar Salsberg v. Modern Transfer Co. (324 F. 2d 737)
3. Aloysius McGinty v. C. K. R. (325 F. 2d 820)
4. U.S.A. ex rel Petrushansky v. Marasco (325 F. 2d 562)
5. U.S.A. ex rel Meers v. Wilkins (326 F. 2d 135)
6. Willie C. Hooks v. New York Central RR Co. (327 F. 2d 259)
7. Harold Kornfeld v. Thomas J. Eaton (327 F. 2d 263)
8. Blitz v. Boog (328 F. 2d 596)
9. U.S.A. v. Haskell (327 F. 2d 281)
10. Olive Dindo v. Grand Union (331 F. 2d 138)
11. U.S.A. v. Norman McConney (329 F. 2d 467)
12. U.S.A. v. Sullivan (329 F. 2d 755)
13. Schner Block Co. v. C. I. R. (329 F. 2d 875)
14. U.S.A. v. Curtiss (330 F. 2d 278)
15. Rooted Hair v. Ideal Toy (329 F. 2d 761)
16. Foster v. U.S.A. (329 F. 2d 717)
17. U.S.A. v. Hammer Contracting Co. (331 F. 2d 173)
18. King v. Hildebrandt (331 F. 2d 476)
19. U.S.A. v. Marquez (332 F. 2d 162)
20. U.S.A. ex rel. Lupo v. Fay (332 F. 2d 1020)
21. Slocomb v. C. I. R. (334 F. 2d 269)
22. U.S.A. v. Ralph Sette (334 F. 2d 267)
23. Minchin v. C. I. R. (335 F. 2d 30)
24. Asheville Mica et al. v. Commodity Credit (335 F. 2d 768)
25. Wong Hing Fun v. P. A. Esperdy (335 F. 2d 656)
26. National Lead Co. v. C. I. R. (336 F. 2d 134)
27. Seneca Nations v. U.S.A. (338 F. 2d 55)
28. Intl. Garment Workers Union v. NLRB (339 F. 2d 116)

PER CURIAM

1. U.S.A. v. William Schmittmeyer (325 F. 2d 987)
2. Eisenhower v. U.S.A. (327 F. 2d 663)
3. In re Binstock (330 F. 2d 267)
4. U.S.A. v. John Capsota (330 F. 2d 612)
5. U.S.A. West ex rel v. LaVallee (335 F. 2d 280)

CONCURRING

1. Hong Sai Chee v. Long Island RR Co. (328 F. 2d 711)
2. U.S.A. v. Plattner (330 F. 2d 271)

DISSENTING

1. Eddie Wittstein v. Amer. Fed. of Musicians (326 F. 2d 26)
2. Joyce v. Bachner (326 F. 2d 556)
3. U.S. ex rel. Angelet v. Fay (333 F. 2d 12)
4. U.S.A. v. Aviles (337 F. 2d 552)
5. Petrol Shipping v. Kingdom of Greece (332 F. 2d 370)

1964 TERM

OPINIONS

1. U.S.A. v. Niro (338 F. 2d 439)
2. Scott Paine v. Motortanker (339 F. 2d 422)
3. In the Matter of League Bookbinding Co. (339 F. 2d 340)
4. Reid v. Quebec Paper Sales (340 F. 2d 34)
5. Greenwich Marine v. S. S. Alexandra (339 F. 2d 901)
6. The Motel Co. v. C.I.R. (340 F. 2d 445)
7. Olsen v. New York Central RR Co. (341 F. 2d 233)
8. Ginsberg v. J. & H. Label Processing Co. (341 F. 2d 825)
9. Mertens v. Flying Tigers (341 F. 2d 851)
10. Exchange Natl. Bk v. Ins. Co. of N.A. (341 F. 2d 673)
11. U.S.A. v. Herbert A. Ellenbogen (341 F. 2d 893)
12. U.S.A. v. Farr (342 F. 2d 383)
13. Martinez v. Mason (344 F. 2d 673)
14. McLeod v. Local 25 (344 F. 2d 634)
15. NLRB v. The Lorben Corp. (345 F. 2d 346)
16. Keyishian v. Board of Regents (345 F. 2d 236)
17. Draddy v. Weston Trawling (344 F. 2d 945)
18. In re Sherman Plastering (not reported)
19. Hetenyi v. Walter H. Wilkins (not reported)
20. Necchi S.p.A. v. Necchi Sewing Machine Sales (not reported)
21. United States v. Achilles Abbamonte (not reported)
22. U.S.A. v. Brown (not reported)

PER CURIAM

1. Joseph Denaro v. U.S.A. (337 F. 2d 275)
2. Grace King v. Secy. Health, Education & Welfare (337 F. 2d 859)
3. Lillian Reiss v. Anthony J. Celebrazione (340 F. 2d 93)
4. U.S.A. v. Robert Berzon (341 F. 2d 899)
5. Jenkins v. Local 5623 (341 F. 2d 571)
6. U.S. ex rel Weber v. Fay (343 F. 2d 710)

CONCURRENING OPINIONS

1. Ruckle v. Roto American Corp. (339 F. 2d 24)

DISSENTING OPINIONS

1. In the Matter of Hudson & Manhattan RR Co. (339 F. 2d 114)
2. The Welch Scientific Co. v. NLRB (340 F. 2d 199)
3. Galamison v. State of New York (342 F. 2d 255)
4. Ephraim v. Safeway Trails (341 F. 2d 815)

NOTE.—Four opinions still to be printed.

Senator JAVITS. That list you did check is accurate.

Mr. MARSHALL. Yes. It has all of them, all of the cases except four that haven't finally been printed yet. They are being worked on.

Senator JAVITS. Now, Judge Marshall, do you know of any reason why you cannot with impartiality, fairness, and vigor appear as Solicitor General of the United States based upon your experience

and the whole range of cases which you will be handling as Solicitor General?

Mr. MARSHALL. Well, I know of no reason that would prevent me from doing the best job I could and my background as an advocate on one side, usually on the defendant's side, and while on the court, I have participated in every type of case that comes before the Federal courts. I don't know of a single field in which I have not written at least one opinion. And those range from formerly unfamiliar fields such as Securities and Exchange Commission, on through to cases involving the rights of criminals. And I believe that the four terms I spent on the court of appeals has given me a clearer understand of just what the law means. I would hope that that would help.

Senator JAVITS. Would you find any difficulty in advocacy of the position of the United States in civil rights cases?

Mr. MARSHALL. Not in the least.

Senator JAVITS. Whatever side the United States happen to be on—

Mr. MARSHALL. I am an advocate and I represent the U.S. Government and I will do the best I can. And personal emotions one way or the other, once you become an advocate, that is it. I would have no trouble, no.

Senator JAVITS. Now, would you feel free to tell us, Mr. Marshall, why you felt the call to leave the bench, its security and its lifetime tenure, when the President asked you to be Solicitor General? Why did you feel you had to accept it?

Mr. MARSHALL. Because the President of the United States told me that he thought I was the best person at the time to represent the United States as Solicitor General, and asked me to do it. That was the reason. The reason was that the President asked me to assume this position. And I believe that in this time, especially, we do what our Government requests of us, and personal feelings to the contrary.

Senator JAVITS. Thank you, Mr. Marshall. Thank you, Mr. Chairman.

Senator BURDICK. As a country lawyer, I am interested in your record. How did you do on those appeals from the circuit court?

Mr. MARSHALL. Oh, in the Supreme Court, it is 30-odd, I have forgotten how many. I don't remember how many I have won, but I certainly remember that I lost three. I can remember those, because my friends never let me forget that.

Senator BURDICK. How about the appeals that have been taken from your court to the Supreme Court.

Mr. MARSHALL. Well, I haven't been reversed yet, but I—some of the best judges I know of have been reversed and so I don't think that that is too much of a credit, not to be reversed.

Senator BURDICK. The facts are you haven't been reversed yet.

Mr. MARSHALL. Not that I know of. I might have been but I don't remember. I don't keep a box score on it.

Senator BURDICK. Well, my conclusion was based upon the questions propounded by Senator Javits and I ask you again, Is there anything you can think of in your mind or in your disposition to prevent you from acting fairly and effectively and efficiently for the U.S. Government in this position?

NOMINATION OF THURGOOD MARSHALL

Mr. MARSHALL. Not at all, sir. I believe that—I am certain that there is no possible reason that I could have to not adequately represent this Government which is, after all, my Government, just as it is all of our Government.

Senator BURDICK. Thank you, Mr. Marshall.

Mr. MARSHALL. Thank you, sir.

Senator BURDICK. Any questions from the committee?

Judge, you can step down now.

Mr. MARSHALL. Thank you, Senator.

Senator JAVITS. There is nothing you wish to add, Judge Marshall?

Mr. MARSHALL. No, sir; not unless there are questions.

Thank you, sir.

Senator BURDICK. Are there any other persons present in the committee room this morning who care to speak on behalf of Judge Marshall?

Hearing none, are there any persons who wish to speak against Judge Marshall?

Are there any persons in the room that wish to make any appearance of any kind?

The statement of Hon. William F. Ryan, of New York, will be inserted in the record, at this time.

STATEMENT OF CONGRESSMAN WILLIAM F. RYAN (DEMOCRAT-LIBERAL, OF NEW YORK) IN FAVOR OF THE APPOINTMENT OF THURGOOD MARSHALL AS SOLICITOR GENERAL OF THE UNITED STATES

Mr. Chairman, it is a great privilege for me to be able to submit a statement in support of Judge Marshall's confirmation as Solicitor General of the United States. I am glad to have this opportunity to pay tribute to one of the Nation's finest advocates, and certainly one of its most distinguished citizens.

Our Nation has seen a succession of accomplished lawyers in this office. Judge Marshall's nomination, I believe, insures the continuation of the excellence which we have come to expect from those who have held this high and important office. His qualifications were succinctly stated by President Johnson who cited him as "a lawyer and judge of very high ability, a patriot of deep convictions, and a gentleman of undisputed integrity."

Judge Marshall became a member of the Maryland bar in 1933, shortly after his graduation from the Howard University School of Law. He has been a member of the Supreme Court bar since 1939. He also has been a member of the bar of the U.S. Court of Appeals for the Second Circuit, the court on which he has performed distinguished service these past 4 years, as well as the Courts of Appeals for the Fourth, Fifth, Sixth, and Eighth Circuits. He also has been a member of the bars of numerous district courts and has been especially admitted to appear in many jurisdictions.

At the time of his elevation to the bench on October 23, 1961, the then president of our New York State Bar Association, and one of our most distinguished lawyers said: "We found Mr. Marshall well qualified, which is a high rating in our book, and reserved for only a few."

Judge Marshall has carried a full share of the labors of one of the busiest courts in the Nation. This is amply demonstrated by the number and quality of the opinions he has delivered from the bench. From the fall term of 1961 through the fall term of 1964, he has spoken for the court on almost 100 occasions.

Mr. Chairman, the law provides that under the direction of the Attorney General, the Solicitor General has special charge of the business of, and appears for and represents, the Government in the Supreme Court. Judge Marshall is uniquely qualified for this responsibility. He has argued more than a score of cases in the Supreme Court and other Federal courts and has been successful on almost every occasion. In the 32 cases which he has argued before the Nation's highest tribunal—before which he will have to appear as Solicitor General—he has established the remarkable record of winning 29. This is a record of which any practicing lawyer could be very proud.

NOMINATION OF THURGOOD MARSHALL

9

I personally and most Americans applaud the contribution he has made to our jurisprudence in his 20 years as chief counsel of the NAACP. Regardless of individual feelings, his skills are universally recognized. Opposing counsel in some of the most important cases he handled before appointment to the Federal judiciary, said of him:

"He was an excellent lawyer in the courtroom. He was courteous, he didn't rant or rave, and he asked good questions."

"He is an able lawyer and a skillful advocate."

"He is eminently fair. Certainly he is one of the top civil liberties lawyers in the country."

Although the leading civil rights lawyer of his time, his 4 years on the bench have demonstrated that he is a lawyer's judge, and an American, not a special pleader for any group or segment of the country. After observing him on two occasions in London, noted correspondent Eric Sevareid noted: " * * * what stayed with me, what was to me impressive and humbling, was that in everything the man said on both occasions, in his every expression and gesture, one was made conscious of the presence * * * of an American, period."

At the time of his nomination to the Federal bench, allegations impugning his patriotism were circulated. The extensive inquiry made by the committee, his overwhelming confirmation by the Senate, and his exemplary performance as a judge, extinguished even the most unreasonable of these charges. Nevertheless, in the past few days, false charges have appeared anew in the Congressional Record. I deplore, as I am sure the members of this distinguished committee deplore, this attempt to malign a great American.

Mr. Chairman, Judge Marshall is well qualified for the post of Solicitor General, and I urge his prompt confirmation by this committee.

The committee will be adjourned.

(Whereupon, at 10:22 a.m., the committee was adjourned.)

O